IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1652 OF 1980

The Cotton Corporation of India Ltd. .. Plaintiffs

Vs.

The Co-operative Textile Mills Ltd. .. Defendants

Mr.R.C.Shah i/b M/s.Divekar & Co. for the plaintiffs

Mr.S.V.Shetty for the defendants

CORAM : S.U.KAMDAR, J

DATED : 02.08.2005

ORAL JUDGMENT:

1. The present suit is filed for the recovery of sum of Rs.15,78,006.49 alongwith interest thereon @ 20% p.a. Some of the material facts of the present case briefly enumerated are as under:

2. By letter dt.11.4.77, the All India Federation of Cooperative Spinning Mills Ltd. requested the plaintiffs to book for and on their behalf 500 bales of Guatemala Cotton and 500 bales

of Sudan Cotton and this was confirmed by the defendants by their letter dt.18.4.77. Thereafter the defendants applied to the Textile Commissioner Government of India, Bombay for import of the said goods being 500 bales of Sudan Cotton. Subsequently, thereafter the plaintiffs sent a Contract bearing no.G/655 dated 12.5.77 in standard form to the defendants for the purpose of their signature. Clause 33 of the said contract reads as under:

> "33. If the duplicate copy of this agreement is not returned by the Mills duly signed within seven days from the receipt of this agreement, it will be deemed to have been accepted by the mill."

3. It is the case of the plaintiffs that inspite of the aforesaid terms and conditions of the contract, the defendants did not return the duplicate copy duly signed by them and thus, there is a concluding and binding contract between the plaintiffs and the defendants. Pursuant thereto, the plaintiffs imported the said goods being 500 bales of Sudan Cotton at the price of Rs.5150/- per

candy CIF Bombay. It was agreed under the said contract that the defendant will also be liable to make payment of various other charges and the same will be paid by the defendants to the plaintiffs on handing over all documents such as Bill of Lading, Insurance Policy, Invoice etc. On 19.8.77, the plaintiffs informed the defendants that out of 500 bales 474 bales of Sudan Cotton were shipped by the foreign shippers and asked the defendants to make arrangement for taking delivery of the said bales at Bombay. However, in place of accepting the delivery thereto, the defendants by their letter dt.6.9.77 cancelled the said contract for purchase of 500 bales of Sudan Cotton and refused to take delivery thereof. Subsequently, on 15.9.77, the plaintiffs informed the defendants that it is not possible to cancel the contract and insisted that the defendants must take delivery of the goods. By letter dt.24.9.77 defendants expressed their inability to purchase the said material owing to their financial difficulties. It is the case of the plaintiffs that the said goods arrived in Bombay but the defendants did not take delivery and therefore, the said goods were cleared by the

plaintiffs from the customs. By letter dt.3.10.77, plaintiffs called upon the defendants to take delivery of the said goods within 15 days from the receipt of the letter failing which it was stated that the plaintiffs will sell the goods and will hold the defendants liable for loss suffered by them in respect of the said transaction.

4. However, defendant still did not take delivery of the goods. Accordingly, the plaintiffs sold the said goods and after adjustment of the amount received towards the sale proceeds, it is the case of the plaintiffs that the plaintiffs have suffered loss of Rs.15,78,006.49. Plaintiffs have also claimed interest @ 20% p.a. in respect of the said claim under the terms of the contract. Defendants have filed written statement and has interalia contested the claim on merits. It is the case of the defendants that there is no concluded contract as they have not executed the same by putting their signatures thereon. It is also contended that letter dt.15.3.77 was issued without any authority and thus, not binding on the defendants. Defendants have also denied the

liability to make payment. Defendants have also raised various issues such as issue of limitation, issue of territorial jurisdiction of this court and issue that whether the suit is maintainable under s.117 of the Uttar Pradesh Co-operative Societies Act, 1965. Pursuant to the aforesaid, issues were framed which are as under:

1. Whether the suit filed by the plaintiffs is bad and liable to be dismissed as the plaintiffs have not obtained leave under Clause XII of Letters Patent alleged by the defendants in paragraph 1 of the written statement?

2. Whether the suit of the plaintiffs is not maintainable as no notice under section 117 of the U.P.Co-operative Societies Act, 1965 was given before filing of the suit as alleged in paragraph 2 of the written statement?

3. Whether the Hon’ble Court has no

jurisdiction to entertain and try this suit?

4. Whether the suit of the plaintiffs is barred by the law of Limitation?

5. Whether the defendants prove that the letter dated 15th March 1977 placing the order of cotton with the plaintiffs is not binding on the defendants as the signatory of the said letter was not authorised to do so under the Bye-Laws of the defendants as alleged in paragraph 6 of the written statement?

6. Whether the plaintiffs prove that there was a concluded valid and binding contract bearing No.G/655 dated 12th May 1977 for the sale and supply of 500 bales of Sudan cotton by the plaintiffs to the defendants?

7. Whether the plaintiffs prove that the defendants committed breach of the contract by refusing to take delivery of 500 bales of cotton?

8. Whether the defendants prove that the plaintiffs committed breach of the contract as alleged in paragraph 8 of the written statement?

9. Whether the plaintiffs prove that the plaintiffs suffered loss of Rs.15,78,006.49 on account of breach of contract on the part of the defendants and that the plaintiffs are entitled to claim the said loss and interest thereon as claimed by the plaintiffs in the plaint?

10. What reliefs?

5. By my order dt. 19.07.2005 I directed the parties that issues no.1 to 4 will be tried as preliminary issues and accordingly I have heard the matters on preliminary issue being issues no.1 to 4. This preliminary issue falls in three parts. Issue no. 1 and 3 pertains to the territorial jurisdiction of the court. Issue no.4 pertains to

the limitation and Issue No.2 pertains to maintainability of suit for non-service of notice. In so far as Issue No.4 pertaining to limitation is concerned, the learned counsel for the plaintiffs has drawn my attention that the cause of action in the present case arises only when the defendants repudiated the contract by letter dt.6.9.77. The said letter dt.6.9.77 has been produced before me. He has also contended that the suit is lodged in this court on 4.9.80. Thus, the suit is within time. I therefore, hold the issue of limitation in favour of the plaintiffs and against the defendants.

6. In so far as the issue of jurisdiction is concerned, the only contention advanced by the defendant is that because the registered office of the defendants is situated in the State of U.P., this court could not have jurisdiction to entertain the present suit without obtaining leave u.s.12 of the Letters Patent. On the other hand, the learned counsel for the plaintiffs has pointed out para 7 of the plaint and it has been contended that in the said para the whole of cause of action has arose

within the territorial jurisdiction of this court. The said para 7 of the plaint reads as under:

> "7. The said contract was signed by the plaintiffs in Bombay and the moneys were to be paid in Bombay. The delivery of the said cotton was to be made in Bombay and the whole cause of action has arisen in Bombay. The contract in terms provides that it shall be subject to the exclusive jurisdiction of Civil Courts in Bombay. The plaintiffs, therefore, submit that this Hon'ble Court has jurisdiction to entertain and try the suit.

7. No part of the claim made in para 7 has been controverted by the defendants in written statement. However, in so far as clause 12 is concerned, it has been contended that even if it is so because the defendants is residing outside the territorial jurisdiction of this court then in that event leave is required to be obtained. I am unable to accept the contention of the learned counsel for the defendants. Clause 12 of the Letters Patent reads as under:

> "12. Original jurisdiction as to suits - And We do further ordain that the said High Court

> of Judicature at Fort William in Bengal (Madras)(Bombay), in the exercise of its ordinary ordinary civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause court at (Madras),(Bombay), Calcutta, in which the debt or damage or value of the property sued for, does not exceed one hundred rupees.

8. Under clause 12 of the Letters Patent if person is carrying on business outside the territorial jurisdiction of the court but if any substantial proof of cause of action has arose within the territorial jurisdiction of the court then in that event this court will have jurisdiction on leave being obtained under clause but in a case where whole of the cause of action arose within the territorial jurisdiction of this court, then in that event this court shall have jurisdiction irrespective of the fact that defendants reside or carry on business outside the

territorial jurisdiction of this court and in such cases there is no need to obtain a leave under clause 12. The learned counsel for the plaintiffs has further drawn my attention to the fact that by virtue of Clause 32 of the said contract exclusive jurisdiction is vested with this court. The said clause 32 of the contract reads as under:

> "32. This agreement shall (subject to the provision for Arbitration) be subject to the exclusive jurisdiction of Civil Courts in Greater Bombay."

9. In the present case, the whole of the cause of action arose within the territorial jurisdiction of this court and in light of clause 32 of the contract, I am of the opinion that this court shall have jurisdiction to entertain and try the present suit. Accordingly, I answer the said issue no.1 and 3 also against the defendants and in favour of the plaintiffs.

10. This leads me to the next contention which has been advanced by the learned counsel for the

defendants. The learned counsel for the defendants has drawn my attention to s.117 of the Utter Pradesh Cooperative Societies Act, 1965 and it has been contended that in absence of notice as contemplated u.s.117 no suit shall be instituted against Cooperative Society or any of its officers in respect of any act relating to the constitution, management or the business of the society until the expiration of two months next after the notice is served and delivered to the Registrar. It is an admitted position before me that no such notice as contemplated u.s.117 has been issued by the plaintiffs to the Registrar. In the present case, the learned counsel for the plaintiffs however has contended that the provisions of s.117 are not applicable. In the present case he has drawn my attention to the provision of ss.2 of s.1 of the said Act which reads as under:

> "(2) It extends to the whole of the State of Uttar Pradesh."

11. It provides that the Act extends to th whole of the State of U.P. It has been contended

that in the light of the aforesaid position the act has no application in the State of Maharashtra and therefore, no notice is required to be given. The learned counsel for the plaintiffs has in support of the aforesaid contention relied upon the Judgment of the Apex Court in the case of Gwalior Dugdha Sangh Sahakari Ltd. Vs. G.M.Govt. Milk Scheme, Nagpur and Others reported in (2003) 7 Supreme Court Cases 529 particularly para 3 thereof. The said para 3 of the aforesaid judgment reads as under:

> "3. It is not disputed that the agreements were entered into and executed at Nagpur which is outside the territorial jurisdiction of the State of Madhya Pradesh. Section 1 of the Act provides that the provisions of the Act would be applicable to the Whole of Madhya Pradesh. Since the operation of the Act is intra-State and cannot be applied beyond the territory of the State of Madhya Pradesh, it must be held that Section 64 of the Act is not applicable."

12. Section 117 of the U.P.Co-operative Societies Act, 1965 reads as under:

> "117. Notice necessary in suits - No

> suit shall be instituted against a co-operative society or any of its officers in respect of any act relating to the constitution, management or the business of the society until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

13. On the other hand, the learned counsel for the defendants has drawn my attention to the Judgment of the learned single Judge of this court in the case of Gurudev Developers Vs. Kurla Konkan Niwas Co-op.Hsg.Society reported in 2000(3) Mh.L.J. Pg.131 and another judgment of the single Judge in the case of Suprabhat Co-operative Housing Society Ltd. and another Vs. M/s.Span Builders and another reported in 2002 C.T.J. 3933 and has contended that the provision of s.117 of the U.P.Co-operative Societies Act, 1965 which is in parameteria to Section 164 of the Maharashtra Co-operative Societies Act, 1960, are mandatory and binding and on non-compliance thereof, suit is liable to be dismissed.

14. I have considered the aforesaid aspects after hearing both the parties in the present case. It is an admitted position in this case that no notice as contemplated u.s.117 is given. The only issue which requires to be considered is whether the said provision of s.117 are applicable to the proceedings which are instituted in this court. If such provisions are applicable then obviously the provisions are couched in a mandatory language and the aforesaid two judgments of the single judge of this court delivered relying upon earlier Division Bench Judgment of this court holds that such provisions are mandatory and in absence thereof suit is liable to be dismissed.

15. In my opinion, the provision of s.117 would apply to the present case. I am of the opinion that only because the suit is filed outside territorial jurisdiction of the the State of U.P. the provisions cannot be made applicable. The provision of s.117 only provides for issuance of notice. Such issuance of notice does not have any extra territorial jurisdiction. The question whether the act would apply in the other states or

not would depend upon different facts of the case where the operation of the said act can be given effect to or not by the Court within the state. I am of the opinion that non-service of notice has nothing to do with any extra territorial jurisdiction and thus, the said principle is not applicable to the cases for issuance of notice. The judgment which has been cited by the plaintiffs of the Apex Court is totally irrelevant on the facts and circumstances of the present case. That was the judgment under which the contention was raised that the provision of s.64 of Madhya Pradesh Co-operative Societies Act, 1960 are applicable in respect of suit instituted in Nagpur. The provision of s.64 of the said Act provided for a forum for determination of a dispute between the parties. It is clear that s.64 of the Act is equivalent to s.91 of the Maharashtra Co-operative Societies Act 1960.This provision are provided for a forum for adjudication of the disputes. It is well settled that if the cause of action does not arise within the territorial jurisdiction of the forum or a court then such court could not have jurisdiction to entertain and try the suit. The

forum created under a state statue obviously cannot determine the disputes which are arose outside the territorial jurisdiction of such a forum.

16. In the light of the aforesaid fact the Apex court has held that since the entire cause of action has arose in Nagpur which is outside the state of Madhya Pradesh provision of s.64 which provides for resolution of dispute under the Act by a forum of Registrar of Co-op.Society would not be applicable because the suit or a proceeding is required to be filed at Nagpur where s.64 does not apply nor any forum u.s.64 of the M.P.Act has been constituted. This, does not mean that the provision of s.117 of the said Uttar Pradesh Co-operative Societies Act would not be applicable in the present case. The said act merely provides for issuing notice to the Registrar and notice can be issued even by instituting a suit in this court. Apart therefrom the provision of s.117 does not restrict that notice is only required to be issued in cases where suits or proceedings are instituted in the State of U.P. In my opinion by relying on the Apex Court Judgment, it is not possible to hold

that suit is maintainable even without issuing a notice u.s.117 of the Uttar Pradesh Co-operative Societies Act. In the light of the aforesaid position in law I hold that suit is not maintainable for want of notice under Uttar Pradesh Co-operative Societies Act, 1965 and therefore suit is liable to be dismissed as not maintainable.